

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GOVERNMENT'S RESPONSE TO COURT ORDER (DOCKET NO. 237)
AND MOTION FOR ENDS-OF-JUSTICE CONTINUANCE,
AND EXCLUSION OF TIME, UNDER THE SPEEDY TRIAL ACT

The United States of America, by and through Assistant United States Attorneys Laura J. Kaplan and Kristina E. Barclay, respectfully responds to the Court's Second Amended Pretrial Order (Docket No. 237), Paragraph 4, as follows:

1. On March 22, 2019, this Court entered an Order dismissing the Third Superseding Indictment. *See* Docket No. 220. On March 23, 2018, the government filed a Notice of Appeal of this Court’s Order dismissing the Third Superseding Indictment. *See* Docket No. 221. On March 28, 2019, the First Circuit Court of Appeals issued an opinion reversing the Court’s dismissal of the Third Superseding Indictment, and issued its Mandate to this Court on April 18, 2019. *See* Docket Nos. 231, 232, 233. Under the Speedy Trial Act, “[i]f the defendant is to be tried upon an indictment or information dismissed by a trial court and reinstated following an appeal, the trial shall commence within seventy days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period for trial not to exceed

one hundred and eighty days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical.” 18 U.S.C. § 3161(d)(2). The Speedy Trial clock thus started anew on April 19, 2019, the day after the Mandate became final. *See United States v. Kemp & Assoc., Inc.*, 2019 WL 1574951 (D.Utah 2019) (citing *United States v. Mobile Materials*, 871 F.2d 902, 913 n.16 (10th Cir. 1989), abrogated on other grounds by *Bloate v. United States*, 559 U.S. 196 (2010)); *see also United States v. Joost*, 133 F.3d 125, 130 (1st Cir. 1998) (interpreting “the date the action occasioning the retrial” as used in 18 U.S.C. § 3161(e) as day First Circuit mandate became final). However, since there are currently two motions pending (Docket Nos. 187 and 206), the time between April 19, 2019 and the date on which those motions are decided is excluded under 18 U.S.C. § 3161(h)(1)(D).

2. The government anticipates that a trial of this matter would last approximately two weeks, exclusive of jury selection.

Respectfully submitted,

ANDREW E. LELLING
United States Attorney

By: /s/ Laura J. Kaplan
Laura J. Kaplan
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By: /s/Laura J. Kaplan
Laura J. Kaplan
Assistant U.S. Attorney